

EXCERPT FROM MAY 25, 2004

THE JUDGE: You may be seated.

Let me say at the outset that I certainly appreciate and understand the difficulties that people who are not experienced in these matters would or could encounter in terms of their obligations and their duties and responsibilities arising out of a process with which they are quite unfamiliar. And I say that with due respect to Mr. B. because clearly, as a civilian in the community, is not experienced in these matters and, indeed, felt obliged in the circumstances to bring forward a complaint relative to the conduct of certain members of the Winnipeg Police Service in August of 2002. And that once those wheels were set in motion, it can fairly be said that Mr. B. did not perhaps completely comprehend the nature of the process that had been undertaken. Nevertheless, he, in fairness and in candor today, certainly acknowledges that as the person who had instituted the process, he did have certain duties and obligations in terms of meeting time lines that, given all of the other issues that were going on in his life at the time, he was unable to meet.

That said, Mr. B.'s complaint was deemed abandoned by the commissioner as a result of the commissioner's office not receiving responses from Mr. B. to enquiries that they had made of him both in writing and through the intermediary of his stepmother, who was a person with whom the investigator had had a conversation or conversations. And, again, in fairness and in candor today, Mr. B. acknowledges that he may very well have had a conversation or

conversations with his stepmother in response to the September 23rd, 2002 letter from the commissioner's office but that again there have been so many other issues on his mind over the past several years related to family and otherwise, that he really doesn't recall with any certainty the substance of any conversation or recall with any certainty that, in fact, such a conversation or conversations took place but he acknowledges it is entirely possible.

On the 6th of November of 2002 and in accordance with the provisions of The Law Enforcement Review Act, Commissioner Wright notified Mr. B. by registered mail that the complaint had been deemed abandoned as a result of his non-responses to the enquiries of the commissioner's office. Mr. B., some two weeks to the day later, attended to the office of the commissioner and provided the further detail that had been requested of him on earlier occasions. And at that same time, in accordance with information provided him by the representatives of the agency, pursuant to Subsection 2 of Section 13 of The Law Enforcement Review Act, advised that he wished to apply to have the decision reviewed by a Provincial Judge. That set in motion the process which has culminated today, with the hearing that has taken place today.

For the benefit of Mr. B., there is contained in the Act a further subsection, Subsection 3 of Section 13 of the Act, which details or directs the procedure to be conducted on such an application and that section, sir, states the following:

On receiving an application under
Subsection 2, the commissioner
shall refer the complaint to a
Provincial Judge...

That has taken place.

...who, after hearing any submissions from the parties in support of or in opposition to the application...

And we have now had that hearing this afternoon. I have heard from you in support of your application. I have heard from Mr. Weinstein in objection or in opposition to the application, and I have heard from Mr. Boyd, as a representative of the commissioner, in respect of the commissioner's position. And the section goes on to say:

...if satisfied...

And that means me today, as a result of the submissions that I have heard, if I am satisfied that the commissioner erred in declining to take further action on the complaint, I have certain remedies at my disposal. I can either (a) refer your complaint for a full hearing, or (b) instruct that the commissioner take such other action under the Act respecting the complaint as I direct.

The operative term in that subsection, it seems to me, Mr. B., is that I must be satisfied that the commissioner erred in declining to take further action. As you know, he declined to take further action because he had deemed your complaint to have been abandoned as a result of your non-responses.

It seems to me in the circumstances that the test that I must apply in determining whether or not I am satisfied that the commissioner erred is what is called the reasonableness test. Was the action taken and the decision

made by the commissioner unreasonable in the circumstances? And if I found it to be unreasonable, then I would be satisfied that he had erred in declining to take further action.

Clearly, in this instance the commissioner had the jurisdiction to address the matter. Clearly, in this particular case the commissioner had the authority to take the action and had the jurisdiction to deal with the matter in the fashion in which he did. That said, and bearing in mind the purpose and intent of the Act, I am satisfied that Mr. Wright, the commissioner, did not err in declining to take further action. And I say that, Mr. B., with due respect to you and with due respect and acknowledgement of the various other issues and problems that you were encountering in your life at that time. Nevertheless, I believe that the action taken by the commissioner was certainly not unreasonable in the circumstances. Having said that, therefore, this application is dismissed.

That would appear to conclude the matter for this afternoon.

Thank you for your time, Mr. B.

THE CLERK: All rise. Court is closed.

THE COURT: Counsel, thank you, as well, for your time.

(EXCERPT CONCLUDED)

CERTIFICATE OF TRANSCRIPT

I, **JEANNE METCALFE**, hereby certify that the foregoing pages of printed matter, numbered 1 to 4, are a true and accurate transcript of the proceedings recorded by a sound recording device that has been approved by the Attorney-General and operated by court clerk/monitor, A. Koben, and has been transcribed by me to the best of my skill and ability.

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